Counsel for the defendant submits that the legal effect of the notice of possession of May 23, 1975 was that the Collector became the defendant's new landlord in the place of the old landlord; that there was a legal change in the ownership of the premises; that that was all that happened and that the defendant remained the tenant of the premises as continuance is presumed in the absence of any notice to quit.

I reject this submission. The Collector does not have to issue a notice to quit to get rid of the tenant or other occupiers of the property after he has served a notice of possession. If the Collector is opposed or impeded thereafter in taking possession, he may apply to the Commissioner of Police who must enforce the surrender of the land to the Collector. See section 47 of the Act. As the land vests in the State upon the operation of section 18 of the Act, the State Lands Act (Cap. 285) operates on the land and the land may be dealt with in any manner authorised by the State Lands Act. Furthermore, the State Lands Encroachments Act (Cap. 286) applies to the land with all the powers therein granted to the officers of the State to remove unauthorised persons from the land. In short, the State is absolute owner of the land following the notice of possession recognising no interest or encumbrance previously affecting the land.

The word "encumbrances" as appearing in section 18 of the Act has the widest possible meaning. It obviously applies to such recognised interests as leases, sub-leases and mortgages. It also applies to lesser rights such as easements, rights of way, profits a prendre, customary rights and trust rights. Even a mortgagee's rights are removed from the land and affixed to the compensation money.

In this case, whatever rights the defendant had in the premises were extinguished on May 23, 1975 when the State became the owner of the premises. Thereafter the Collector could have issued to the defendant a temporary occupation licence. Such licences are issued, as pointed out by the Collector who gave evidence for the plaintiffs, to the actual occupants of the premises. This means that the plaintiffs also would have been issued with such a licence if the Collector was minded to do so, but in fact no such licence was issued to anyone in this case. Without a temporary occupation licence, the defendant had no rights at all in the premises after May 23, 1975 and no right to collect any money from the plaintiffs after that date.

In my judgment the plaintiffs are entitled to recover from the defendant their refundable deposit of $18,000 and also the sum of $10,838.70 which they paid to the defendant in respect of the period May 24, 1975 to December 31, 1975.

The defendant counterclaims for 2½% commission on the sale of the plaintiffs' goods or $9,000 for every six months, whichever is higher from January 1, 1976. On the evidence, this counterclaim clearly fails and is rejected.

There will be judgment for the plaintiffs against the defendant in the sum of $28,838.70 together with interest at six per cent per annum from date of the writ until payment. The defendant will also pay the plaintiffs' costs of this action as taxed. The defendant's counterclaim is dismissed with costs.

Claim allowed; Counterclaim dismissed.

Solicitors: *Kirpal Singh & Co.; P.T. Wong & Co.*

H.S. RAO & ANOR. v. A. ABDUL WAHAB & CO.

[O.C.J. (Sinnathuray J.) July 27, 1979]
[Singapore — Motion in Suit No. 3403 of 1978]

Trade Marks — Interim injunction — Sale of incense joss-sticks under similar trade mark for over five years — No urgency to restrain defendants — Interim injunction discontinued.

The plaintiffs in this case obtained an *ex parte* interim injunction against the defendants to restrain them from infringing the plaintiffs' registered trade mark by importing, selling or offering for sale incense joss-sticks under the trade mark known as "Sugandhari Sangam", or any other trade mark similar to the plaintiffs' registered trade mark.

An *inter partes* hearing was held to decide whether the interim injunction should be continued.

Held: there was no urgency in having the defendants restrained by the continuation of the interim injunction as the defendants had shown that the offending labels and wrappers had been used since eight years ago and known to the plaintiffs for at least five years.

MOTION IN SUIT.

R. Joethy for the plaintiffs.

Mrs. Murgiana Haq for the defendants.

Cur. Adv. Vult.

Sinnathuray J.: An *ex parte* interim injunction was in force in favour of the plaintiffs, Aravinda Parimala Works, against the defendants, A. Abdul Wahab & Co. (and their servants and/or agents) restraining them from infringing the plaintiffs' registered Trade Mark No. 50631 by importing, selling or offering for sale incense joss-sticks under the trade mark known as "Sugandhari Sangam" contained in labelled cartons or wrapped packages, or any other trade mark or marks which are in any way deceptively similar to or a colourable imitation of the plaintiffs' registered trade mark, and, also from passing off or attempting to pass off or causing, enabling or assisting others to pass off the said "Sugandhari Sangam" or any colourable imitation thereof as and for the goods of the plaintiffs.

At the *inter partes* hearing of the notice of motion for the continuation of the interim injunction order, after hearing counsel for the plaintiffs and the defendants, and upon an undertaking by the defendants to keep strict accounts of all sales of their product, I ordered that the interim injunction be discharged. I now give the reasons for the decision.

There were two issues for decision. The first was whether, on the facts, there was an urgency that the plaintiffs should be protected by the continuation of the *ex parte* interim injunction. The second was whether the plaintiffs would suffer irreparable damage if the interim injunction was discharged.

The plaintiffs are manufacturers of incense joss-sticks in India. They have been marketing them in Singapore for over 15 years, and are the registered proprietors of Trade Mark No. 50631. The joss-sticks in labelled cartons or in wrapped packages are substantially in the form of the said trade mark and bear the words "Sugandha Shringar".

In the affidavit filed by the agent of the plaintiffs, for the *ex parte* interim injunction, it was alleged that the *plaintiffs have recently ascertained* that the defendants have put upon the market and sold incense joss-sticks not of the plaintiffs' manufacture or merchandise in cartons and in packages bearing a get-up which is a colourable and deceptive imitation of the well-known get-up of the plaintiffs (the italics are mine).

For the hearing, a partner of the defendants filed a counter affidavit. In it it is stated that the defendants' principals, a factory in India, manufacture incense joss-sticks which are sold in Singapore in cartons or in packages in a get-up not very different from that of the plaintiffs but with the words "Sugandhari Sangam". The principals are the registered proprietors of their incense joss-sticks in Trade Mark No. 53554. The defendants who have been the principals' agents for a variety of incense joss-sticks since 1965, have continuously, since 1970, been marketing the incense joss-sticks complained of by the plaintiffs. Also, in the said affidavit are other material facts which reveal that the plaintiffs have known for over five years of the defendants selling in Singapore the said joss-sticks.

On these facts, counsel for the defendants submitted, and I paraphrase her written submission, that if, as the plaintiffs said, the defendants have only recently made use of the offending labels and wrappers, then they should produce evidence that the use was recent which they have not. The plaintiffs' allegation was made because unless they told the court that the infringement was a recent one they knew they would not have obtained the *ex parte* injunction. Now that the defendants have been given an opportunity to state the true position they have shown beyond doubt that the labels and wrappers used had been used since eight years ago and known to the plaintiffs for at least five years. There was, therefore, no urgency in having the defendants restrained by the continuation of the interim injunction. They could very well wait until the issues are tried at the full hearing.

I concurred with the submission.

Next, on the issue of irreparable damage, I can be brief. In an another affidavit filed for the plaintiffs there is the following statement:

"Taking the year 1976 in which the greatest imports were allegedly made by the defendants and when compared to my imports of 'Sugandha Shringar' joss-sticks for the corresponding year, it will be noted that the value of the defendants' imports amounted to only 1.168% of the imports for the year."

Counsel for the defendants submitted that whilst the defendants do not admit the figures, nonetheless it was clear that if only 2% of the plaintiffs' sales are being affected by the defendants' sale of their joss-sticks, then it could not be said irreparable damage would be caused to the plaintiffs. It was in this context that counsel gave an undertaking on behalf of the defendants to keep strict accounts of sales of the particular brand of incense joss-sticks complained of by the plaintiffs. I accepted the undertaking which I deemed to be sufficient protection for the plaintiffs should they succeed at the trial of the action.

Order accordingly.

Solicitors: *Joethy & Co.; Drew & Napier.*